

### REMARKS

Claims 1-12 are pending in the application. Claims 1, 2, 7, and 8 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Publication No. 2002/0193118 to *Jain et al.* (hereinafter *Jain*). Claims 3, 4, 9, and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Jain* in view of U.S. Patent No. 6,295,452 to *Choi*. Claims 5 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Jain* in view of U.S. Publication No. 2005/0009518 to *Einola et al.* (hereinafter *Einola*). Claims 6 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Jain* in view of U.S. Publication No. 2002/0141349 to *Kim et al.* (hereinafter *Kim*).

Attached hereto, please find a replacement drawing sheet for sheet 4 of 8 containing FIGs. 5 and 6 in which FIG. 5 has been amended to correct a minor typographical error in Step 510. It is respectfully submitted that no new matter has been added.

The present application, as defined by the Claims, is drawn to an apparatus and a method for improving system performance by scheduling uplink channels. The system and method receives, adjusts, and transmits ROT (Rise Over Thermal Noise) information and schedules uplink channels accordingly. As defined by the Claims of the present application, the adjustment and the transmission steps are performed by an RNC (Radio Network Controller).

The Examiner equates the adjusting operation as recited by the Claims of the present application, with the adjusting operation as taught by *Jain*. However, *Jain* teaches the adjusting and transmitting operation is performed by a base station as opposed to an RNC, as recited by the Claims of the present application.

Moreover, as disclosed by the present application and recited by the Claims, a target RPT is adjusted according to the relationship between ROT measured when adjusting ROT and target ROT. However, *Jain* discloses comparing a measured metric such as ROT with the outerloop threshold.

Regarding the rejection under 35 U.S.C. §102(e) of Claim 1, Claim 1 has been amended and is further distinguished.

As discussed above, *Jain* teaches a method and apparatus for congestion control in a wireless communication system.

Amended Claim 1 includes the recitations of receiving at the RNC a measurement ROT for the target cell from a Node B that controls the target cell, adjusting the target ROT for the target cell at the RNC according to a relation between the measurement ROT and the target ROT for the target cell, and transmitting the adjusted target ROT from the RNC to the Node B, these recitations are neither taught nor suggested by *Jain*.

Moreover, with reference to Page 2 of the Office Action, the Examiner states that the base station controller as taught in Paragraph 32, Lines 3-4 of *Jain*, teaches the “access network” is a base station or base station controller. However, Claim 1 includes the recitation of receiving at the RNC a measurement ROT for the target cell from a Node B that controls the target cell, adjusting the target ROT for the target cell at the RNC according to a relation between the measurement ROT and the target ROT for the target cell, and transmitting the adjusted target ROT from the RNC to the Node B. In other words, the RNC performs the steps of receiving, adjusting and transmitting specific information that is described above. In contrast, the cited text of *Jain* teaches the method 150 as shown in FIG. 2 is performed by a base station or base station controller. Accordingly, *Jain* does not teach or suggest the receiving, adjusting, and transmitting steps performed by the RNC as described above.

Moreover, as recited by Amended Claim 1, the adjusted target ROT is transmitted from the RNC to the Node B. The Examiner states that the adjusted target ROT that is transmitted (from the ROT) to the Node B is inherently disclosed by *Jain*. However, *Jain* merely teaches using a congestion bit that is used to indicate a congestion condition (e.g., see, FIGs. 5A and 5B). This congestion bit is a single bit that indicates a congestion condition. However, as recited by the Claims of the present application, the adjusted target ROT is transmitted from the RNC to the Node B. Accordingly, in contrast to that which is taught by *Jain*, Claim 1 includes the added limitation of transmitting the adjusted target ROT that is transmitted from the ROT to the Node

B, which is neither taught nor suggested by *Jain*.

Moreover, it is respectfully submitted that before a reference can be found to disclose a feature by virtue of inherency, one of ordinary skill in the art viewing the reference must understand that the unmentioned feature at issue is *necessarily* present in the reference. *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 USPQ2d 1746, 1749 (Fed. Cir. 1991) The test of inherency is not satisfied by what a reference “may” teach. *Id.* (“Inherency... may not be established by probabilities or possibilities. The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient”.)

Accordingly, as *Jain* does not teach or suggest each and every limitation of Claim 1, it is respectfully requested that the rejection of Claim 1 under 35 U.S.C. §102(e) be withdrawn.

Regarding the rejection of independent Claim 7 under 35 U.S.C. §102(e), Claim 7 includes similar recitations as those contained in amended Claim 1. Accordingly, it is respectfully submitted that Claim 7 is patentably distinct for at least the same reasons as set forth above with respect to the rejection of Claim 1. Withdrawal of the rejection of Claim 7 is respectfully requested.

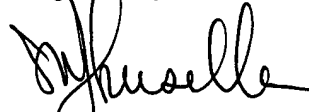
Independent Claims 1 and 7 are believed to be in condition for allowance. Without conceding the patentability per se of dependent Claims 2-6 and 8-12, these are likewise believed

to be allowable by virtue of their dependence on their respective amended independent claims.

Accordingly, reconsideration and withdrawal of the rejections of dependent Claims 2-6 and 8-12 is respectfully requested.

Accordingly, all of the claims pending in the Application, namely, Claims 1-12, are believed to be in condition for allowance. Should the Examiner believe that a telephone conference or personal interview would facilitate resolution of any remaining matters, the Examiner may contact Applicants' attorney at the number given below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Musella", written over a horizontal line.

Michael J. Musella  
Reg. No. 39,310  
Attorney for Applicant

DILWORTH & BARRESE  
333 Earle Ovington Blvd.  
Uniondale, New York 11553  
Tel: (516) 228-8484  
Fax: (516) 228-8516